

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FABIAN THOMAS,

Plaintiff,

v.

DENISE DANIEL, ACTING DIRECTOR
MARGARET WEICHERT,

Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:19-CV-00703-RWS

ORDER

Plaintiff, Fabian Thomas, proceeding *pro se*, filed suit in the 442nd Judicial District Court for Denton County, Texas (Cause No. 2010-61789-393), against Denise Daniel, his former spouse, and Margaret Weichert in her official capacity as the Acting Director of the U.S. Office of Personnel Management. Thomas seeks to clarify his final divorce decree and temporarily freeze all assets and payments being made to his former spouse by OPM. Weichert removed the action to the Eastern District of Texas, and this Court referred the matter to the Honorable Christine Nowak, United States Magistrate Judge, at Sherman, Texas, for consideration pursuant to applicable laws and orders of this Court.

The United States moves to dismiss this action for lack of subject matter jurisdiction and for failure to state a claim. Docket No. 16. The Magistrate Judge recommends that the motion be granted because Thomas has not exhausted his administrative remedies, a prerequisite to this Court's jurisdiction. *See* Docket No. 25.

The Court has considered the Report and Recommendation of the United States Magistrate Judge filed pursuant to such order, along with the record and pleadings. The Court mailed a copy


of the Report and Recommendation to Thomas via certified mail, return receipt requested, on April 20, 2020. Docket No. 23. No parties filed objections to the Report and Recommendation. Accordingly, Thomas is not entitled to *de novo* review by the District Judge of those findings, conclusions, and recommendations, and except upon grounds of plain error, he is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C. § 636(b)(1)(C); *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

Nonetheless, the Court has reviewed the pleadings in this case and the Report of the Magistrate Judge and agrees with the Report of the Magistrate Judge. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give to the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants’”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)).

The Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is

ORDERED that the motion to dismiss (Docket No. 16) is **GRANTED**. Thomas’s claims are **DISMISSED WITHOUT PREJUDICE**.

So ORDERED and SIGNED this 29th day of May, 2020.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE